IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4651 of 2007
with
CIVIL APPLICATION No. 12122 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNITED INDIA INSURANCE CO. LTD. - Appellant
Versus
RASHMIKABEN PRAVINBHAI PATEL & 4 - Defendant(s)

==========

Appearance :
MR PV NANAVATI and MR VIBHUTI NANAVATI for Appellant.
MR RC JANI for Respondents : 1,
None for Respondents : 4 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

Admitted. Learned advocate Mr.R.C.Jani, who appears on caveat, waives service of notice for respondents No.1, 2 & 3 (orig. claimants). Notices to respondents No.4 & 5, who are driver and owner of the truck respectively, are dispensed with, as no relief is sought against them.

2. Since the issue involved in the appeal is narrow, by consent of learned advocates for the parties, the matter is heard finally today.

3. This appeal arises out of a judgment and award dated 7.5.2007 rendered by the Motor Accident Claims Tribunal (Auxi.), Vadodara, in Motor Accident Claims Petition No.723 of 1998, which was preferred by the present respondents No.1, 2 & 3.

4. The claim application arose out of an accident that occurred on 11.12.1997 at about 10.00 P.M. on V.I.P.Road, Vadodara when deceased Pravinbhai Natvarlal Patel, aged 37 years was knocked down by Truck No.GJ-17-T-8111 while the deceased was going on his motor-cycle No.GJ-6-N-3213. The deceased, who

sustained serious injuries on his head, was taken to Mayo Hospital at Baroda and succumbed to the injuries on 14.12.1997. The deceased was working as a Manager (Production and Administration) in Graphic Printing Press, Chhani, Vadodara. Original claimant No.1 is his widow, whereas original claimants No.2 & 3 are his son and daughter respectively. They preferred the claim-application for getting compensation of Rs.17 Lacs. The application was opposed to by the owner, driver and Insurer (The appellant herein) of the Truck. The Insurance Company tendered an application under Section 170 of the Motor Vehicles Act and sought permission to defend the claim-application on all counts, which was granted by the Tribunal.

5. The case of the claimants was that the deceased was drawing a salary of Rs. 5500/- per month. To prove this, an employee from the Graphic Printing Press, Chhani, Vadodara was examined at Exh.19. The Tribunal found that the accident was attributable solely to the negligence of the driver of the Truck. The Tribunal also concluded that the prospective income of the deceased would have been Rs.8,250/- and

the dependency loss to the claimants would be Rs.5500/- per month (i.e.Rs.66,000/- per annum). The Tribunal adopted multiplier of 16 years and calculated dependency loss at Rs.10,56,000/-. An amount of Rs.20,000/- was awarded towards loss to the estate. A further amount of Rs.20,000/- was awarded as compensation for loss of consortium, Rs.5000/- towards funeral expenses, Rs.25,000/- towards medical expenses, and Rs. 25,000/- for pain, shock and suffering. The Tribunal, thus, awarded in all Rs.11,51,000/- to the claimants with interest at the rate of 7.5% per annum and costs.

6. The appellant is the insurer of the Truck, who assails the judgment and award only on the ground that the quantum of compensation awarded is on the higher side.

7. We have heard learned advocate Mr.Vibhuti Nanavati for the appellant, and learned advocate Mr.R.C.Jani for the original claimants.

8. Learned advocate Mr.Nanavati contended that the claimants have not adduced any evidence to show that

the deceased possessed any academic qualifications to head a Graphic Printing Press. He submitted that there is no evidence for prospective rise in income either, and therefore, while computing dependency loss, prospective rise in income ought not to have been considered in light of decision in case of **Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors, 2006 ACJ 1058**. Mr.Nanavati also submitted that the Tribunal has erred in adopting multiplier of 16 in light of decision in case of **T.N.State Transport Corpn. Ltd. v. S.Rajapriya & Ors, (2005)6 SCC 236**. He submitted that multiplier of 13 ought to have been adopted by the Tribunal. According to Mr.Nanavati, compensation towards loss to the estate and loss of consortium is also on the higher side.

9. Learned advocate Mr.Jani contended that the deceased was undisputedly working as Manager (Production & Administration) in Graphic Printing Press. He also submitted that unless the deceased was qualified or unless he possessed the requisite qualities of the trade without being qualified, he could not have manned this post. He further submitted that the deceased was aged 37 years and he could have

worked at least for further 24 years and, therefore, rise in income can reasonably be anticipated. Mr. Jani pleaded that decision in case of **Bijoy Kumar Dugar** (supra) expects the claimants to prove that the deceased was in a trade where he could have earned more, but, in such cases, strict standard of proof may not be expected. Mr. Jani, therefore, submitted that the appeal may not be entertained, as the Tribunal has assessed the compensation reasonably, legally and justly.

10. We have considered the evidence of Rashmiben Pravinbhai Patel (orig.claimant No.1) examined at Exh.13, from the certified copy of the evidence produced by learned advocate Mr.Nanavati. We have also considered the evidence of Mr.Samir Rajnikant Shah, who was working with the deceased in the Graphic Printers.

11. So far as negligence part is concerned, the finding of the Tribunal is not under challenge.

12. Coming to the quantum aspect, the deceased was aged 37 years. This aspect is also not in dispute. It is proved through evidence of claimant No.1 and Mr. Samir Rajnikant Shah that the deceased was working as

Manager in Graphic Printers and was drawing monthly salary of Rs. 5500/- at the time of the accident. If evidence of Mr.Samir R.Shah (Exh.19) is seen, he has deposed that ordinarily an employee in the Press gets increment of Rs.400/- to Rs.500/- per month. He says that there would have been rise in income of the deceased. It has come during his cross-examination that take-home-pay of the deceased was Rs.4833.75 ps.

12.1 The upshot of this evidence is that the gross monthly salary of the deceased was Rs.5500/- and his take-home-pay was Rs.4833.75 ps., which can be rounded off to Rs.5000/-. The evidence of Mr.Samir R.Shah indicates that there was a system of giving rise in salary at the place of work of the deceased. The deceased could have worked at least for 20 years. He certainly would have got rise in income as well as position. The witness says that General Manager draws salary of Rs.15,000/- to Rs.16,000/- in the Press. Considering rise in his prospective income, the income of the deceased can safely be assessed at Rs.7,500/- by adding 50% of his assessed income of Rs.5000/-.

12.2 Now, for computing dependency loss, an amount of Rs.2,500/- (being one-third of the prospective income of Rs.7,500/-) has to be deducted towards expenditure that might be incurred by the deceased for his-self. The dependency loss would be Rs.5000/- per month and the annual dependency loss would be Rs.60,000/-. Considering the principles laid down by the Apex Court in case of **T.N.State Transport Corporation Ltd.** (supra), in our view, multiplier of 14 can be adopted, which would bring the amount of dependency loss to Rs.8,40,000/-.

13. The Tribunal has awarded the amount of Rs.20,000/- towards loss to the estate and a further amount of Rs.20,000/- towards loss of consortium, which according to us, is reasonable and needs no interference. The Tribunal has awarded an amount of Rs.5000/- towards obsequial ceremony, which also, according to us, is reasonable and calls for no interference.

13.1 A further amount of Rs.25,000/- is awarded

towards medical expenditure, which also is reasonable considering the fact that the deceased was hospitalised in Mayo Hospital at Baroda and was treated in the hospital for about 3 days. Considering the very same factor, the amount of Rs.25,000/- awarded by way of compensation towards pain, shock and suffering is also reasonable. In our view, therefore, total amount of compensation that the claimants are entitled to, would be as under :

(1) Rs. 8,40,000/- towards dependency loss
(2) Rs. 20,000/- towards loss to the estate
(3) Rs. 20,000/- towards loss of consortium
(4) Rs. 5,000/- towards obsequial ceremony
(5) Rs. 25,000/- towards medical expenses
(6) Rs. 25,000/- towards pain, shock and suffering.

Rs.9,35,000/- Total amount of compensation.

==========

13.2 The Tribunal has awarded interest at the rate of 7.5% per annum, which is also reasonable and is not required to be interfered with.

14. The appeal would, therefore, stand partly allowed by reducing the amount of compensation under

the head of `loss of dependency' from Rs.10,56,000/- to Rs.8,40,000/-. The appellant shall deposit the amount of compensation along with the amount of proportionate costs and interest at the rate of 7.5% per annum from the date of application till date of deposit of the amount.

14.1 Out of the compensation amount, 60% will go to original claimant No.1; 20% will go to claimant No.2 and 20% will go to claimant No.3.

14.2 Out of the amount that would be deposited by the appellant, an amount equivalent to 20% of the said amount will be deposited in a Fixed Deposit in any Nationalised Bank of the choice of the claimants in the name of claimant No.2, i.e. minor Varun Pravinbhai Patel, through his mother and natural guardian, original claimant No.1-Rashmikaben Pravinbhai Patel, initially for a period of five years and then, will be renewed from time to time till minor Varun attains majority.

14.3 Likewise, 20% of the amount that may be deposited by the Insurance Company will be deposited in a Fixed Deposit in any Nationalised Bank of the choice of the claimants in the name of claimant No.3

i.e. minor Parita Pravinbhai Patel, through her mother and natural guardian, original claimant No.1-Rashmikaben Pravinbhai Patel, initially for a period of five years and then, will be renewed from time to time till minor Parita attains majority.

14.4 Out of the remaining 60% of the deposited amount, 60% of that amount (i.e. 36% of the deposited amount) will be paid to original claimant No.1 by crossed A/c.Payee Cheque, and the remaining amount will be deposited in any Nationalised Bank of the choice of claimant No.1 in Fixed Deposit for a period of five years.

14.5 No loan can be permitted to be taken against any of the above Fixed Deposit Receipts, and no charge shall be created by any claimant over Fixed Deposit Receipts.

14.6 The interest that would accrue on all the above Fixed Deposit Receipts would be receivable by claimant No.1.

14.7 The amount of Rs.25,000/- deposited by the appellant would be transmitted to the Tribunal forthwith.

Order on Civil Application No.12122/2007

The Civil Application is disposed of in light of the fact that the Appeal is disposed of.

[A.L.DAVE,J.]

[SHARAD D.DAVE,J.]

(patel)